

Message Text

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FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC 5637

INFO SECDEF WASHDC

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C O N F I D E N T I A L SECTION 1 OF 3 BANGKOK 12587

E.O. 11652: GDS

TAGS: MARR, TH

SUBJECT: TAX EXEMPTION FOR US MILITARY CONTRACTS IN THAILAND

REF: A. BANGKOK 11953

B. BANGKOK 10223

C. COMUSMACTHAI 021056Z MAY 74

D. BANGKOK A-331, AUGUST 23 1972

E. STATE 122742

F. STATE 162559

G. FBIS D270551

H. BANGKOK 12194

I. BANGKOK 10553

1. ON FRIDAY, JULY 26, I HELD AN HOUR'S DISCUSSION WITH THE FOREIGN MINISTER, CHARUNPHAN ITSARANGKUN NA AYUTTHAYA, HIS DEPUTY, MAJOR GENERAL CHATCHAI CHUNHAWAN, AND OTHERS PRIMARILY DEVOTED TO THE DECISION REGARDING US AIRCRAFT FLIGHTS FROM UTAPAO (REF H). HOWEVER, OTHER MATTERS WERE RAISED BY DEPUTY FOREIGN MINISTER, GENERAL CHATCHAI, INCLUDING THE SUBJECT OF US CONTRACTS. I PROMISED THAT I WOULD SEND THE FOREIGN MINISTER A RESUME OF THE STATUS OF THE MATTER IN DUE COURSE. THE NEXT MORNING, JULY 27, I
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RECEIVED REF F WHICH REQUESTED THAT I BRING THE QUESTION OF TAX EXEMPTION FOR US MILITARY CONTRACTS IN THAILAND

TO THE PERSONAL ATTENTION OF THE PRIME MINISTER WITH THE HOPE OF HAVING THE QUESTION RECONSIDERED BY THE CABINET. SUCH ACTION WAS TO BE AIMED AT ENSURING THAT ALL THE POINTS RAISED IN PARA 5, REF E WERE ADEQUATELY COVERED BEFORE A FINAL DECISION WAS REACHED AND THAT THE REPRESENTATIVES OF THE RTG WERE COMPLETELY AWARE OF THE FULL POTENTIAL IMPORT OF AN ADVERSE DECISION.

2. IN REVIEWING THE PROTRACTED HISTORY OF OUR DEALINGS WITH THE RTG ON THIS MATTER, I AM SURE THAT SUCH AN AWARENESS EXISTS. AS FAR BACK AS AUGUST 1972 SIMILAR ASSERTIONS WERE MADE (REF D) WHEN WE ATTEMPTED TO OBTAIN TAX RELIEF AS AS RESULT OF A JANUARY 6, 1972 GAO REPORT TO CONGRESS: "PROGRESS TO STRENGTHEN US GOVERNMENT FOREIGN TAX RELIEF ON DEFENSE EXPENDITURES OVERSEAS." WHILE NO ACTION WAS TAKEN AT THAT TIME BY THE RTG TO RESTRICT THE EXEMPTION FROM TAXES THAT WE ENJOYED, WE WERE UNABLE TO SECURE AN AGREEMENT THAT WOULD HAVE COVERED THE SITUATION WITH WHICH WE ARE PRESENTLY CONFRONTED. THE NEC EXPRESSLY TURNED DOWN OUR REQUEST FOR BLANKET RELIEF WHILE PROVIDING US THE OPPORTUNITY TO REQUEST TAX RELIEF ON INDIVIDUAL CONTRACTS WHEN APPROPRIATE. SHORTLY THEREAFTER WE TOOK ADVANTAGE OF THAT AVENUE TO REQUEST RELIEF FOR THE TRANS-ASIA CONTRACT, SUBSTANTIALLY INTERATING THE BASIC REASONS WHY SUCH RELIEF WAS IN THE MUTUAL INTEREST OF BOTH COUNTRIES. THE REQUEST WAS GRANTED BY NEC DECREE 79, 8 DECEMBER 1972, WHICH EXTENDED TAX RELIEF TO INVITED AMERICAN COMPANIES AND THEIR AMERICAN EMPLOYEES ENGAGED SOLELY IN THE PERFORMANCE OF US CONTRACTS ON THAI APPROVED PROJECTS.

3. THIS RELIEF WAS SHORT LIVED; IN JANUARY 1973, WE WERE INFORMALLY ADVISED BY GENERAL KRIANGSAK THAT MARSHAL THANOM HAD INFORMED GENERAL HAIG THAT THAI TAX-PAYING COMPANIES COULD PROVIDE THE SERVICES PERFORMED BY AMERICAN CONTRACTORS AND THAT AFTER THE EXPIRATION OF CURRENT CONTRACTS IT WAS EXPECTED THAT SUCH WOULD BE THE CASE. THROUGH THE REMAINDER OF 1973 A CONTINUING DIALOGUE ADDRESSED TRANSFERRING THE BUSINESS TO QUALIFIED THAI CONTRACTORS. THROUGHOUT THE DISCUSSIONS IT WAS EMPHASIZED
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THAT THE GRANTING OF TAX RELIEF WOULD FACILITATE SUCH TRANSFER. IT IS APPARENT FROM THE 18 APRIL 1974 LETTER OF GENERAL KRIANGSAK (QUOTED IN REF C), THAT THIS APPROACH WAS UNSUCCESSFUL. NEVERTHELESS NEGOTIATIONS WERE CONTINUED DURING WHICH THE US GOVERNMENT'S POSITION REGARDING THE PAYMENT OF TAXES WERE REASSERTED (REF B). AT BEST THESE NEGOTIATIONS HAVE EXTRACTED AN INFORMAL COMMITMENT TO PROVIDE TAX RELIEF FOR US TECH REPS; HOWEVER, EVEN THIS IS IN JEOPARDY (REF A) BECAUSE OF OUR CONTINUING REFUSAL TO FULLY ACCEDE TO THE WISHES OF THE RTG REGARDING THE MAIN CONTRACTS.

4. I BELIEVE THAT THE RTG IS FIRM IN ITS DESIRE TO HAVE THAI REGISTERED, TAX-PAYING COMPANIES OBTAIN THE US MILITARY CONTRACT BUSINESS (REF G). I DO NOT BELIEVE THAT THE RTG HAS ONLY ONE MAIN REASON FOR HAVING THIS ACCOMPLISHED. IN FACT, IT APPEARS THAT THE FOLLOWING OBJECTIVES ARE ACHIEVABLE AND THEREFORE PROVIDE THE MOTIVATION FOR THIS POSITION:

A. REMOVE OR AT LEAST MINIMIZE THE IMPRESSION THAT THE US, BECAUSE OF FAVORABLE CONCESSIONS, RECEIVES MORE THAN THAILAND DOES FROM THE MUTUAL SECURITY ARRANGEMENT. CONCOMITANTLY, DIFFUSE THE CRITICISM AIMED AT THE RTG FOR THE CONTINUED LARGE US MILITARY PRESENCE IN THAILAND BY PUTTING THE RELATIONSHIP ON A MORE EQUAL BASIS.

B. IMPROVE THE TECHNICAL ABILITY OF THAI FIRMS AND THEIR EMPLOYEES, WHICH WOULD UNDOUBTEDLY ENHANCE THE POLITICAL POPULARITY OF THE INDIVIDUALS AND/OR REGIME WHICH BROUGHT IT ABOUT.

C. INCREASE REVENUE WHILE IT IS AVAILABLE IN VIEW OF OUR PROJECTED DRAWDOWN.

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5. CONSIDERING THE STATE OF FLUX IN WHICH THE THAI GOVERNMENT PRESENTLY IS, ALL THREE OF THOSE OBJECTIVES APPEAR REASONABLE AND DESIRABLE FROM THE RTG PERSPECTIVE. SINCE OUR CONTINUED MILITARY PRESENCE IS CONSIDERED BY SOME AS DENIGRATING THAI SOVEREIGNTY, THIS MATTER, IN MY OPINION, HAS MUCH LARGER POLITICAL OVERTONES THAN A STRAIGHT TAX ISSUE. CONSEQUENTLY, I CANNOT AGREE THAT THE PRIME REASON FOR THE RTG POSITION IS TO PLUG A TAX LOOPHOLE.

6. EVEN THOUGH I DO NOT HAVE MUCH CONFIDENCE IN CONVINCING THE RTG TO REVERSE ITSELF ON THIS QUESTION, I REALIZE THAT WE SHOULD LEAVE NOO STONE UNTURNED. HOWEVER, IN VIEW OF MANY GRAVE MATTES WHICH THE PRIME MINISTER IS PERSONALLY CONCERNED WITH AND ATTEMPTING TO RESOLVE, I DO NOT BELIEVE THAT IT WOULD BE PROPITIOUS TO DEAL WITH HIM DIRECTLY AT THIS TIME. INSTEAD, I WILL TAKE ADVANTAGE OF THE OPENING PROVIDED BY THE DEPUTY FOREIGN MINISTER (SEE PARA 1 ABOVE) BY REPORTING ON THE CURRENT STATUS OF THE QUESTION IN GENERAL TERMS. THE PAPER LEFT WITH MFA WILL STRESS THE PROGRESS THAT HAS BEEN ACHIEVED IN THE UTILIZATION OF THAI CONTRACTORS AND THAI EMPLOYEES AS WELL AS THE CONCERN OF THE USG OVER TAXATION. IT WILL ALSO ADVISE THAT

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WE ARE DEALING WITH THE RTG DESIGNATED AGENCY FOR HANDLING SUCH MATTERS, THE THAI ALLIED COORDINATING COMMITTEE (TACC), WHICH IS CHAIRED BY GENERAL KRIANGSAK AND ON WHICH MFA IS REPRESENTED. BY CONTINUING TO DEAL WITH GENERAL KRIANGSAK, BUT IN HIS TACC RATHER THAN HIS MOD CAPACITY THIS TIME, WE WILL BE ABLE TO EXPLOIT OUR LONG-STANDING RELATIONSHIP AND AVOID IMMEDIATELY BURDENING THE PRIME MINISTER WITH THE COMPLEX TECHNICAL ASPECTS OF WHAT HAS NOW BECOME A POTENTIALLY SENSITIVE POLITICAL ISSUE.

7. IN ORDER TO STRENGTHEN OUR POSITION, IT WOULD BE USEFUL TO HAVE MORE DEFINITIVE INFORMATION REGARDING THE IDENTITY OF THOSE NATIONS WHICH HAVE NOT ONLY RECOGNIZED THE PRINCIPLE OF TAX RELIEF FOR USG MUTUAL DEFENSE EXPENDITURES BUT ALSO THE MANNER IN WHICH IT WAS GRANTED, I.E., BY MEANS OF A SOFA, BASE LEASING AGREEMENTS, SPECIFIC EX POST FACTO LEGISLATION OR WHATEVER. IT WOULD STRENGTHEN OUR NEGOTIATING POSITION TO BE ABLE TO SUGGEST SPECIFIC COMPROMISES WHICH WOULD SAVE FACE FOR THE RTG WHILE PROVIDING US WITH CONCESSIONS ACCEPTABLE TO CONGRESSIONAL OPINION.

8. WE DOUBT THAT THE RTG, AT A TIME OF DWINDLING MAP AVAILABILITIES, WOULD BE OVERLY IMPRESSED BY THE THREAT THAT TAXES PAID TO THE RTG BY US CONTRACTORS WOULD BE RECOUPED FROM THEIR MAP (PARA 5 REF F). HAS CONGRESS

INDICATED ANY WILLINGNESS TO ACCEPT THE GAO RECOMMENDATION IN RESPECT TO THE SPECIFIC CONTRACTUAL PRACTICES THAT WERE INVESTIGATED IN 1971? IN ANY CASE THE THAI, HAVING SEEN AND WELL-REMEMBERING OUR "CAN DO" PERFORMANCE DURING THE INDO-CHINA WAR, ARE CONVINCED THAT THE USG COULD FIND A WAY TO HELP, WITHOUT REGARD TO CONGRESSIONAL OPINION, IF WE REALLY WANTED TO BE TRUE FRIENDS OF THE RTG.

9. AS TO SECURING A TAX EXEMPTION AGREEMENT AT THIS TIME, (PARAGRAPH 7, REFERENCE F) I DON'T HOLD OUT VERY MUCH HOPE. NOT ONLY DOES THE CURRENT UNSTABLE RTG POLITICAL SITUATION AUGUR AGAINST THIS POSSIBILITY, BUT SUCH A CONCESSION FOR THE US WOULD BE POLITICALLY EMBARRASSING TO THE RTG AND WOULD BE SEIZED BY ITS DOMESTIC CRITICS. THE POLITICAL SOPHISTICATION CITED IN REF E ENABLES THAI OFFICIALS TO REALISTICALLY ASSESS THE IMPACT OF OUR DECLINING PRESENCE
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IN COUNTRY AND THE FACT THAT OUR REDUCTIONS ARE PARTLY IN RESPONSE TO OUR OWN INTERNAL POLITICAL PRESSURES, WHICH WOULD NOT BE OFFSET BY THAI CONCESSIONS, EVEN IF THE THAI REALLY WANTED US TO STAY.

10. IF, AS I EXPECT, WE STRIKE OUT IN OUR ATTEMPT TO OBTAIN A BLANKET TAX EXEMPTION AGREEMENT, WE WILL STILL BE FACED WITH THE PROBLEM OF GETTING THE JOB DONE. IGNORING THE RTG DEMANDS WOULD NOT ONLY BE IMPOSSIBLE IN VIEW OF THE RETALIATORY MEANS AVAILABLE TO THE RTG, BUT IT WOULD ALSO BE AN UNACCEPTABLE AFFRONT TO THAI SOVEREIGNTY. CONSEQUENTLY, WE MUST TAKE STEPS NOW TO BE SURE WE CAN STAY OPERATIONAL AFTER 30 SEPTEMBER.

11. TO REVIEW THE BIDDING, IN THE PAST WE HAVE IN REF I SPECIFICALLY DETAILED FOUR OPTIONS AVAILABLE TO US:

A. TAKING THE ISSUE BACK TO THE CABINET, REQUESTING A FULL EXEMPTION FROM THAI TAXES. THIS IS THE COURSE I AM INSTRUCTED TO PURSUE, ALTHOUGH WE HAVE PREVIOUSLY REPORTED (REF I) OUR DOUBTS THAT THIS APPROACH WILL BE PRODUCTIVE OR FEASIBLE.

B. CONTINUE TO STALL THE RTG BY INVOLUTED DISCUSSIONS IN ORDER TO PRESERVE THE STATUS QUO. THE PROBABILITY OF SUCCESS FOR THIS APPROACH LESSENS AS WE GET CLOSER TO THE 30 SEPT DEADLINE. ADDITIONALLY, WE ARE CERTAIN THAT THE RTG WOULD DISCERN OUR PURPOSE, SINCE WE HAVE ALREADY BEEN DISCUSSING THE MATTER FOR SOME EIGHTEEN MONTHS. CONSEQUENTLY, THIS APPROACH COULD ENDANGER THE FAVORABLE TREATMENT ACCORDED TECH REPS AS WELL AS OUR WHOLE RELATIONSHIP.

C. ACCEPT THE RTG POSITION AND REQUIRE US CONTRACTORS TO REGISTER AS THAI FIRMS AND PAY THAI TAXES IN ORDER TO OBTAIN

OUR CONTRACTS. THIS WOULD BE ACCEPTABLE TO THE RTG, ACCORDING TO OUR EARLIER TALKS WITH SUPREME COMMAND, AND WOULD PROVIDE A BASIS FOR AN AGREEMENT ON THE CONTINUATION OF THE FAVORABLE TAX TREATMENT AFFORDED OUR TECH REPS AND SPECIALIZED CONTRACTORS.

D. ARRANGE FOR THE TRANSFER OF THE CONTRACTS TO THAI FIRMS OR TRUE JOINT VENTURES. THE RTG WOULD PREFER IMPLEMENTATION OF THIS OPTION.
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12. OPTIONS C AND D BOTH WOULD CAUSE US TO BE FACED WITH THE NEED FOR EMPLOYING MORE DIRECT HIRE AND USING MORE MILITARY PERSONNEL BECAUSE OF SECURITY AND THE INCREASE IN CONTRACT ADMINISTRATION REQUIREMENTS. ON THE OTHER HAND, FOLLOWING THESE OPTIONS MIGHT ENABLE US TO SEPARATE FEC FROM THE BASE MAINTENANCE CONTRACTORS BECAUSE OF THE TECHNICAL COMPLEXITY AND CLASSIFIED NATURE OF THE WORK, ASSUMING THAT THE RTG WOULD BE SATISFIED FOR THE TIME BEING IF THE BASE MAINTENANCE

WORK WENT TO THAI FIRMS.

13. AN INSTRUCTIVE EXAMPLE OF THE ADVANTAGES OF MARRYING RTG DESIRES AND USG INTERESTS IS PROVIDED BY THE RECENT TRANSFER OF THE UDORN MAINTENANCE FACILITY CONTRACT FROM AIR AMERICA, WHICH HAD BECOME AN EMBARRASSEMENT TO US, TO THAI-AM, A TAX-PAYING JOINT VENTURE 70 PERCENT OWNED BY THE RTG. THIS WEEK IN UDORN I WAS ASSURED BY ALL PARTIES CONCERNED THAT THIS TRANSITION HAS TAKEN PLACE WITHOUT DEGRADATION OF QUALITY PERFORMANCE AND WITH ANTICIPATED REDUCED COSTS TO THE USG. WE ALSO NOTE THAT IN THAT CASE, THE FACT THAT THAI-AM IS LIABLE FOR TAXES WAS NOT INJECTED INTO THE SUCCESSFUL NEGOTIATIONS.

14. UNLESS WE ARE PROVIDED WITH MORE COMPELLING RATIONALE
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THAN THAT WHICH WE HAVE SO FAR RECEIVED, I SEE ALMOST NO CHANCE OF THE RTG GRANTING US A BLANKET TAX EXEMPTION FOR PAYMENTS TO THAI-REGISTERED FIRMS. BY RETAINING AND NOT REPEALING NEC ORDER NO. 79, THE RTG SUBSTANTIALLY ACCEPTS THE PROPOSITION THAT OUR MUTUAL DEFENSE EXPENDITURES TO INVITED USG CONTRACTORS FOR AGREED PROJECTS SHOULD NOT BE BURDENED BY TAXATION. AT THE SAME TIME, HOWEVER, THE RTG IS NOW CONVINCED THAT THERE IS NO NEED FOR US TO CONTINUE RESTRICTING OUR MAINTENANCE BUSINESS TO PRIVILEGED EXPATRIATE AMERICAN FIRMS. TO SOLVE THIS APPARENT DILEMMA, THE RTG IS RELYING ON A STRICT INTERPRETATION OF NEC 79 BY CANCELLING AGREEMENT TO TAX EXEMPTION FOR BASE MAINTENANCE CONTRACTS. IF WE WISH TO CONTINUE OPERATIONS AND PRESERVE THE RTG ACCEPTANCE OF THE TAX EXEMPTION PRINCIPLE, I BELIEVE THAT WE MUST PROCEED WITH A COMBINATION OF THE OPTIONS IN 11. C AND D ABOVE.

15. SPECIFICALLY, EVEN WHILE I AM RAISING AGAIN WITH THE RTG THE PRINCIPLE OF TAX EXEMPTION FOR MUTUAL SECURITY EXPENDITURES, I BELIEVE THAT WE SHOULD TAKE STEPS TO COMPLY WITH THE RTG DECISION. THEREFORE I REQUEST AUTHORITY FOR THE US MILITARY COMMAND TO INFORM THE BASE MAINTENANCE CONTRACTORS AND FEC THAT WE HAVE BEEN ADVISED BY THE ROYAL THAI GOVERNMENT THAT EFFECTIVE SEPTEMBER 30 THE USG WILL NO LONGER HAVE ANY AUTHORITY FOR THEM TO BE CLASSIFIED AS US INVITED CONTRACTORS. ACCORDINGLY, IF THEY ARE TO CONTINUE OPERATIONS, THEY MUST COMPLY WITH ALL THAI LAWS. THE PRINCIPLE WHICH OBTAINS HERE IS THAT WE MUST RETAIN ESSENTIAL SERVICES REGARDLESS OF PRICE AND THAT IF ANY THAI TAX IS INVOLVED, THE CONTRACTOR AND NOT THE USG IS RESPONSIBLE FOR COMPLYING WITH THAI LAW. WE BELIEVE THAT UNDER SUCH INSTRUCTIONS WE COULD RETAIN THE SERVICES OF AMPAC AND TRANS-ASIA FOR THE LIFE OF THE PRESENT CONTRACT EXTENSIONS, I.E., THROUGH FY 75; NEXT YEAR WE WOULD REPROCURE THESE SERVICES UNDER THE MOST COMPETITIVE PROCEDURES WHICH CAN BE

ARRANGED. AT THE SAME TIME WE BELIEVE THAT THERE IS SOME CHANCE THAT UNDER THESE ARRANGEMENTS THE FURTHER EXTENSION OF THE FEC CONTRACT AS A USG-INVITED CONTRACTOR MIGHT POSSIBLY STILL BE NEGOTIATED WITH THE RTG PRIOR TO THE RENEWAL OF THE EXISTING CONTRACT DUE AUGUST 31, 1974.

16 IN THE REAL LONG TERM, I BELIEVE IT WILL BE IN OUR BEST
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INTEREST TO EXPLORE THE POSSIBILITY OF ENTERING INTO LEASE AGREEMENTS WITH THE RTG FOR BOTH THE BASES THAT WE ARE STILL USING AND THOSE THAT WE MAY USE IF WE HAVE TO RETURN TO THAILAND BECAUSE OF SEA REQUIREMENTS. IN CONSIDERATION OF OUR PAYING THE COSTS, THE RTG WOULD AGREE TO MAINTAIN THE FACILITIES TO OUR SPECIFICATIONS INCLUDING THOSE FACILITIES IN STANDBY STATUS. UNDER SUCH AN ARRANGEMENT NOT ONLY WOULD WE AVOID THE QUESTION OF TAXATION, BUT WE COULD ALSO RECEIVE EFFECTIVE SECURITY FOR NON-OPERATIONAL BASES WHICH WOULD FACILITATE OUR RETURN IF SUCH WAS NECESSARY.

17. WE NO LONGER HAVE THE LUXURY OF TIME ON OUR SIDE SINCE THE 30 SEPT. DEADLINE IS, IN MY OPINION, SERIOUS. WHILE I WILL PROCEED AS INDICATED IN PARA 6 ABOVE, WE MUST BE ABLE TO CONTINUE OPERATIONS IF THE REQUESTED RELIEF IS NOT GRANTED. THIS MESSAGE HAS BEEN WRITTEN AFTER MANY MEETINGS AND DISCUSSIONS BETWEEN MYSELF, CG, MACTHAI AND MEMBERS OF OUR RESPECTIVE STAFFS. THE VIEWS CONTAINED HEREIN REFLECT OUR COMBINED BEST JUDGMENT. I CAME INTO MY OFFICE SUNDAY MORNING TO GIVE IT A FINAL REVIEW BEFORE SIGNING OFF ON IT. I NOW THEREFORE REQUEST EXPEDITED EVALUATION OF MY PROPOSALS IN PARA 14 ABOVE AND ISSUANCE OF APPROPRIATE INSTRUCTIONS TO MILITARY CONTRACTING OFFICIALS TO TAKE IMMEDIATE STEPS VIS-A-VIS OUR PRESENT BASE MAINTENANCE CONTRACTS TO ENSURE THAT WE CAN STAY IN BUSINESS HERE IN THAILAND.
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